

# Welcome to Landmark Chambers' 'Asylum Accommodation' webinar

The recording may be accessed [here](#).

# Your speakers today are...



**Justin Bates (Chair)**

**Topic:**  
Local Authority  
Duties



**Hafsa Masood**

**Topic:**  
Financial  
support for  
asylum seekers



**Alex Shattock**

**Topic:**  
Temporary  
Asylum  
Accommodation  
and Delay

## Local Authority Duties



**Justin Bates**

## Local authorities and asylum seekers

### Part 7, Housing Act 1996

- Historically, asylum seekers were eligible for homelessness assistance under what is now Pt.7, 1996 Act (or Pt.2, Housing (Wales) Act 2014)
  - e.g. *R v Hillingdon LBC ex p Streeting (No 2)* [1980] 1 WLR 1425; *R v Westminster City Council ex p Castelli, Same ex p Tristram-Garcia* (1996) 28 HLR 616
- But, since 1993, the focus has been on keeping asylum seekers out of the local authority homelessness regime (Asylum and Immigration Appeals Act 1993)
- Can see that now in s.185, Housing Act 1996 and the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (and Welsh equivalent)
  - Class E only applies to asylum seekers whose claims were registered before 3 April 2000 and no new “asylum seeker” class was created

## But the oddity of Part 6, HA 1996

- Although the allocation of housing to an ineligible person (e.g. an asylum seeker) is *ultra vires*, that does not affect the private law validity of the tenancy: *Akinbolu v Hackney LBC* (1996) 29 HLR 259
  - So an asylum seeker *could* be granted a secure tenancy by mistake?
    - *Ibrahim v Haringay LBC* [2021] EWHC 731 (QB)

## The Covid context

On 26 March 2020, as part of the response to the Coronavirus pandemic, the government wrote to local authorities in England and urged them – under what came to be known as the “Everyone In” Scheme - to procure accommodation for people sleeping rough both for their own protection and more widely because of the risk of infection generally

How were they to do that given the exclusion of most foreign nationals (including asylum seekers) from Part 7, Housing Act 1996?

*R (Ncube) v Brighton & Hove City Council* [2021] EWHC 578 (Admin)

- C is a failed asylum seeker who was sleeping rough in Brighton
- September 2020, he approaches the authority for assistance under “Everyone In”
- Authority decline to help, pointing to the exclusion in s.185, HA 1996
- JR claim issued. He contends that he can be helped under
  - s.138, Local Government Act 1972
  - s.2B, NHS Act 2006
  - s.1, Localism Act 2011

## Ncube

A local authority may incur such expenditure as they consider necessary which is calculated to avert, alleviate or eradicate the effects or potential effects of any emergency or disaster: s.138, Local Government Act 1972.

- engaged by covid and a power to house in this case so long as not used for the purposes of avoiding s.185, HA 1996

A local authority must take such steps as it considers appropriate for improving the health of people in its area; which may include providing assistance to help individuals to minimise the risks to health arising from their accommodation or environment: s.2B, National Health Service Act 2006.

- engaged by covid and a power to house in this case so long as not used for the purposes of avoiding s.185, HA 1996

A local authority may do anything which an individual may do (s.1, Localism Act 2011), save that the authority may not use that power to do anything which is prohibited by virtue of an earlier legislative provision: s.1 and 2, Localism Act 2011

- not available because s.185, HA 1996 is a pre-existing prohibition. Left open whether it might be different if LA 2011 was the only way to avoid a breach of the HRA 1998

## Protect and vaccinate

In December 2021 and in light of the spread of the Omicron variant, the Minister for Rough Sleeping wrote to local authorities in England to urge them to “make offers of safe and appropriate accommodation to people who are sleeping rough” and, in particular, to assist such people in obtaining coronavirus vaccinations. The letter explains that support can be provided regardless of immigration status and draws attention to s.2B, National Health Service Act 2006, s.138, Local Government Act 1972 and s.1, Localism Act 2011 (if necessary to avoid a breach of their human rights)

- so goes a bit further than *Ncube*

These powers are *not* limited to Covid...



## Temporary Asylum Accommodation and Delay



**Alex Shattock**

# Asylum accommodation in the news....



## Djokovic stay highlights refugee concerns at Melbourne detention hotel

By Alice Cuddy  
BBC News

7 January



# Asylum accommodation in the news....

## Home Office hotels for asylum seekers 'akin to detention centres' - report

Lawyers documented deterioration in health of asylum seekers while staying in accommodation



The Crowne Plaza Hotel near Heathrow is being used to house asylum seekers. Last week a distressed man threatened to jump from the roof. Photograph: Chris J Ratcliffe/Getty Images

## Asylum seeker, 24, found dead at hotel near Heathrow

Comment



Faye Brown

Monday 19 Jul 2021 1:43 pm



1.3k  
SHARES



The Crowne Plaza hotel near Heathrow Airport is being used to house asylum seekers (Picture: Getty)

## This talk

- Legal framework for Home Office provided accommodation
- How to bring a challenge
- Grounds of challenge
- Top tips for claimants: evidence, interim relief and settling

## Legal framework

- Immigration and Asylum Act 1999, Section 95/98: asylum seekers

### **Section 95- Persons for whom support may be provided.**

(1) The Secretary of State may provide, or arrange for the provision of, support for—

(a) asylum-seekers, or

(b) dependants of asylum-seekers, who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed.

(2) In prescribed circumstances, a person who would otherwise fall within subsection (1) is excluded.

(3) For the purposes of this section, a person is destitute if—

(a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or

(b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.

(4) If a person has dependants, subsection (3) is to be read as if the references to him were references to him and his dependants taken together.

## Legal framework

- Immigration and Asylum Act 1999, Section 95/98: asylum seekers

### **Section 98- Temporary support**

(1) The Secretary of State may provide, or arrange for the provision of, support for—

- (a) asylum-seekers, or
- (b) dependants of asylum-seekers,

who it appears to the Secretary of State may be destitute.

(2) Support may be provided under this section only until the Secretary of State is able to determine whether support may be provided under section 95.

## Legal framework

- Immigration and Asylum Act 1999, Section 4: failed asylum seekers

### **Section 4- Accommodation**

(2) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a person if—

- (a) he was (but is no longer) an asylum-seeker, and
- (b) his claim for asylum was rejected.

## Types of challenge

- Rejection of s.95/98/4 claim
- Challenge to amount of provision
- System challenges
- Challenge to delay in providing accommodation
  - Particular difficulties recently due to Covid
  - Particular difficulties due to outsourcing



## Grounds of challenge

- Unreasonable delay
- Failure to meet statutory duty
- Section 55 of the Borders, Citizenship and Immigration Act 2009 (duty to have regard to the best interests of children)
- Disability or other Equality Act discrimination
- HRA Article 8 and possibly 3
- Other grounds possible- *Padfield* etc

## Top tips for claimants

- Evidence
  - More detailed the better
  - Ideally from medical professionals e.g. GP; can get other professionals like dieticians, occupational therapists etc
  - Should link the problems to the accommodation situation specifically
  - Put it to the Home Office before issuing!

## Top tips for claimants

- Interim relief
  - Usual to always ask for this- N463 within 7 days or (now) N244 if 7 days or more
  - Think carefully about how soon you can reasonably justify in terms of judicial consideration: depends on the facts. Worse facts/more urgency= earlier consideration. If the facts are not on your side re: urgency, be realistic

## Top tips for claimants

- Interim relief

- The test for IR is modified *American Cyanamid*: (1) triable issue (2) balance of convenience with the addition of public interest
- SSHD often says- you are asking for a mandatory injunction so need to show “strong prima facie case” i.e. higher hurdle. This is wrong: see Admin Court Guide and *AS v Liverpool CC* [2020] EWHC 3531 (Admin). At best mandatory nature of order goes to balance of convenience
- Status quo: *K v SSHD* [2020] EWHC 3639 (Admin):
 

*“The Secretary of State puts forward that the status quo is leaving the family where they are. In my judgment, that would not be maintaining the status quo . The status quo must be for the Secretary of State to comply with her duties.”*

## Top tips for claimants

- Settlement/next steps
  - If you get interim relief: usual to settle with your costs paid- you essentially got what you asked for. Hard to argue case has not become academic, unless systemic challenge or other aspect to the claim.
  - Don't settle before confirming client is happy with the dispersal accommodation- it might be worse than the temporary accommodation!
  - If you pleaded damages this part of the claim can survive and be transferred to the CC

## Financial support for asylum seekers



**Hafsa Masood**

## Section 95 IAA 1999

S.95 – power to provide or arrange for the provision of “**support**” for asylum seekers (and dependants) who appear to be or are likely to become destitute.

(S.95(3) – a person is “destitute” if:

*“(a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or*

*(b) he has adequate accommodation and the means of obtaining it but cannot meet his other essential living needs.”)*

## Ways in which “support” may be provided

s.96 -

*“(1) Support may be provided under section 95:*

*(a) **by providing accommodation** appearing to the Secretary of State to be adequate for the needs of the supported person and his dependants (if any);*

*(b) **by providing what appear to the Secretary of State to be essential living needs** of the supported person and his dependants (if any); ....’*

*(2) If the Secretary of State considers that the circumstances of a particular case are exceptional, he may provide support under section 95 in such other ways as he considers necessary to enable the supported person and his dependants (if any) to be supported.”*



- Reg 10 of the Asylum Support Regulations 2000 (“ASR”) (as amended):
  - “(1) *This regulation applies where the Secretary of State has decided that asylum support should be provided in respect of the essential living needs of a person.*
  - (2) As a general rule, asylum support in respect of the essential living needs of that person may be expected to be provided weekly in the form of a weekly cash payment of £39.63.**
  - (3) Where the Secretary of State has decided that accommodation should be provided for a person by way of asylum support, and accommodation is provided in a form which also meets other essential living needs (such as bed and breakfast, or half or full board), the amount specified in paragraph (2) shall be treated as reduced accordingly.**”
- Reg 12(3) ASR: appropriate deduction can be made if asylum seeker has income or assets.
- NB: those supported under s.4(2) also receive weekly allowance to cover essential living needs.

## “Essential living needs” - what are they?

- **Reg 9(4) of the ASR** – cost of faxes, computers and cost of computer facilities, cost of photocopying, travel expenses (subject to certain exceptions), toys and other recreational activities, and entertainment expenses are not essential living needs.
- **Otherwise, for SSHD to decide (subject to minimum required by Reception Directive)** (*Refugee Action [2014] EWHC 1033 (Admin)*, paras 90-91, *JK (Burundi) [2017] EWCA Civ 433*, para 87)
- **Home Office ‘Report on the allowances paid to asylum seekers and failed asylum seekers: 2020’ (2020 Review)** – identifies “all needs that are considered “essential” for average, able-bodied asylum seeker and their dependents and which are not covered through other arrangements” and assesses cost of meeting each need.

## “Essential living needs” – what are they?

- **Food and drink**
- **Clothing and footwear**
- **Toiletries**
- **Laundry and toilet paper**
- **Healthcare** (generic non-prescription medication e.g. painkillers)
- **Travel and communication** – not considered essential needs in themselves, but “*may be necessary in limited circumstances to enable other needs to be met, including those related to maintaining interpersonal relationships and a minimum level of participation in social, cultural and religious life*” (2020 Review; *Refugee Action*, para 115)

## “Essential living needs” – level of support

Categories of need	Sum allowed per week (2018 Review)	Sum allowed per week (2020 Review)
Food and drink	£24.70	£26.49
<i>Adjustment for CPI</i>		£0.40
Toiletries	£1.05	£0.69
Healthcare	£0.95	£0.35
Household cleaning items (changed to 'Laundry/toilet paper' in the 2020 Review)	£0.95	£0.43
Clothing and footwear	£2.80	£3.01
Travel	£4.30	£4.70
Communications	£3.00	£3.56
<b>Total</b>	<b>£37.75</b>	<b>£39.63</b>

## “Essential living needs” – support in full board initial accommodation

- Remember Reg 10(3) of ASR?
- SSHD’s longstanding approach – weekly cash allowance not paid to those in full-board initial accommodation (“IA”) because: essential living needs either met through support package provided in full board IA, or they did not arise on a short-term basis. Only paid on dispersal to self-catered accommodation.
- Pandemic (and pause on cessation of support accounted on 27 March 2020) resulted in: (i) greater use of contingency hotels and (ii) people spending significantly longer in IA (for summary, see *R (JM) v SSHD*, paras 35ff).
- Resulted in departure from longstanding approach...

## “Essential living needs” - support in full board initial accommodation

27 October 2020 – following decision announced by SSHD:

- A weekly payment of **£8** would be made for: **cost of clothing** (c.£3), **non-prescription medication** (£0.35) and **travel** (£4.70). Accommodation provider would continue to provide for other essential living needs.
- Backdated weekly payments of:
  - **£3** from 27 March 2020 until 30 June 2020 (for **cost of clothing**. Nothing for travel since travel “generally inappropriate” in this period due to COVID restrictions)
  - **£7.70** from 1 July 2020 till 27 October 2020 (for **cost of clothing** and **travel**).
  - Nothing for non-prescription medication.

## R (JM) v SSHD [2021] EWHC 2514 (Admin)

C in full board IA (2 hotels) between 1 May 2020 – 1 Feb 2021. Claimed travel and communication needs of asylum seekers in C's position not sufficiently met.

Challenged following aspects of 27 Oct 2020 decision:

- (1) Travel:** decision not to make backdated payments for travel in respect of the period 27 Mar - 30 Jun 2020;
- (2) Communication:** decision not to include a sum for communication (on the basis that this would be met by accommodation providers).

## R (JM) v SSHD [2021] EWHC 2514 (Admin)

Held:

**(1) Travel:** decision lawful.

**(2) Communication:** decision unlawful. SSHD failed to have proper regard to communication needs of asylum seekers in full board IA (during the pandemic). Made declaration, but left it to the SSHD to decide what needed to be done to address unlawfulness found.

(See also general observations re nature of SSHD duty under s.95 to meet “essential living needs”: paras 102-107).



## R (AXG) v SSHD [2022] EWHC 56 (Admin)

C and her daughter in full board IA (various hotels) between early Nov 2019 – Jun 2021.

In addition to pursuing the same challenge re communication and travel as in JM, C challenged the following aspects of the 27 Oct 2020 decision:

- (1) Non-prescription medication:** decision not to make backdated payments for non-prescription medication.
- (2) Imposition of a long-stop date of 27 March 2020** for backdated payments.

## R (AXG) v SSHD [2022] EWHC 56 (Admin)

Held:

- (1) Non-prescription medication:** decision unlawful. There was no evidence that could rationally form the basis for the conclusion that this need was being met by full board accommodation providers or otherwise. As in JM, left it to SSHD to decide how to address unlawfulness found.
- (2) Imposition of long-stop date of 27 March 2020:** decision lawful. Rational not to extend scheme to period before 27 March 2020.

## Additional financial support available

- **Additional weekly payments for pregnant women (£3), child under 1 (£5), child between 1 and 3 (£3):** Reg10A of ASR (s.95 supported); Reg 7 of Immigration and Asylum (Provision of Services or Facilities) Regulations 2007 (s.4 supported).
- **One-off maternity grant (£250) for pregnant women/new mothers** payable in period 8 weeks before expected date of birth or 6 weeks after birth.
- **Exceptional circumstances** – if additional support required because of an individual's exceptional circumstances this can be provided under s.96(2) IAA 1999.

# Thank you for listening

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